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Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8- foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**DECLARATION OF MAX L.  
KELLEY IN SUPPORT OF JOINT  
REQUEST FOR EXTENSION OF  
DISCOVERY CUT-OFF**

I, Max L. Kelley, hereby declare:

1. I am an associate in the firm of Cox, Wootton, Griffin, Hansen & Poulos,  
LLP, attorneys of record for Plaintiff Del Mar Seafoods, Inc. ("Del Mar"). I submit this

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP  
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

DelMarSeafoods/2504

1 declaration in support of the parties' Joint Request for Extension of the Discovery Cut-Off. I  
 2 have personal knowledge of the facts stated below and if called to testify regarding those  
 3 facts, I would and could competently testify thereto.

4 2. Attached to this declaration as **Exhibit 1** is a true and correct copy of the  
 5 Court's Case Management Order filed on September 5, 2007, in this matter.

6 3. Attached to this declaration as **Exhibit 2** are true and correct copies of the  
 7 deposition subpoenas for Michael and Leonard Cohen served on defendants in this matter.

8 4. Attached to this declaration as **Exhibit 3** are true and correct copies of the  
 9 deposition notices of defendants Barry and Chris Cohen served on defendants in this matter.

10 5. On January 2, 2008, plaintiff's counsel was informed by defense counsel that  
 11 defendants would make their documents responsive to plaintiff's requests for production  
 12 available for inspection in Avila Beach, California. On January 3, 2008, defense counsel  
 13 informed plaintiff's counsel that the amount of documents to be produced for inspection was  
 14 approximately 50 boxes.

15 6. Because Michael and Leonard Cohens' depositions would be going forward in  
 16 San Luis Obispo on January 4, 2008, plaintiff intended to utilize another attorney to inspect  
 17 the defendants' documents on the same day.

18 7. After counsel for the parties met and conferred, they agreed that information  
 19 obtained from Barry Cohen at his deposition next week might limit the plaintiff's request for  
 20 documents and the subsequent production and inspection thereof, and might also  
 21 significantly limit the scope of the Cohen sons' depositions.

22 8. There are storm warnings and severe weather travel advisories posted for  
 23 northern and central California from the evening of Thursday, January 3 through at least the  
 24 evening of Friday, January 4, 2008.

25 ///

26 ///

27 ///

28 ///

COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS LLP  
 190 THE EMBARCADERO  
 SAN FRANCISCO, CA  
 94105  
 TEL 415-438-4600  
 FAX 415-438-4601

D:\Mm\Scatbody\2504



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEL MAR SEAFOODS, INC.,

Plaintiff,

No. C 07-02952 WHA

v.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTINE COHEN), *in personam* and  
F/V POINT LOMA, Official Number 515298,  
a 1968 steel-hulled, 126-gross ton, 70.8 foot  
long fishing vessel, her engines, tackle,  
furniture apparel, etc., *in rem*, and DOES 1-10,

Defendants.

**CASE MANAGEMENT  
ORDER AND REFERENCE TO  
ADR UNIT FOR MEDIATION**

After a case management conference, the Court enters the following order pursuant to Rule 16 of the Federal Rules of Civil Procedure ("FRCP") and Civil Local Rule 16-10:

1. All initial disclosures under FRCP 26 must be completed by **SEPTEMBER 7, 2007**, on pain of preclusion under FRCP 37(c).
2. Leave to add any new parties or pleading amendments must be sought by **OCTOBER 31, 2007**.
3. All unserved defendants and any Doe defendants must be formally identified and served by **SEPTEMBER 21, 2007**.
4. The non-expert discovery cut-off date shall be **JANUARY 11, 2008**.

**EXHIBIT 1**

- 1 5. The last date for designation of expert testimony and disclosure of full expert reports  
2 under FRCP 26(a)(2) as to any issue on which a party has the burden of proof  
3 (“opening reports”) shall be **JANUARY 11, 2008**. Within **FOURTEEN CALENDAR DAYS**  
4 thereafter, all other parties may disclose responsive expert testimony with full expert  
5 reports responsive to opening reports (“opposition reports”). Within  
6 **SEVEN CALENDAR DAYS** thereafter, the opening parties may disclose any reply reports  
7 limited solely to rebutting specific material in opposition reports. Reply reports must  
8 be limited to true rebuttal and should be very brief. They should not add new material  
9 that should have been placed in the opening report. The cutoff for all expert discovery  
10 shall be **FOURTEEN CALENDAR DAYS** after the deadline for reply reports. In aid of  
11 preparing an opposition or reply report, a responding party may depose the adverse  
12 expert sufficiently before the deadline for the opposition or reply report so as to use the  
13 testimony in preparing the response. Experts must make themselves readily available  
14 for such depositions. Alternatively, the responding party can elect to depose the expert  
15 later in the expert-discovery period. An expert, however, may be deposed only once  
16 unless the expert is used for different opening and/or opposition reports, in which case  
17 the expert may be deposed independently on the subject matter of each report. At least  
18 **28 CALENDAR DAYS** before the due date for opening reports, each party shall serve a  
19 list of issues on which it will offer any expert testimony in its case-in-chief (including  
20 from non-retained experts). This is so that all parties will be timely able to obtain  
21 counter-experts on the listed issues and to facilitate the timely completeness of all  
22 expert reports. Failure to so disclose may result in preclusion.
- 23 6. As to damages studies, the cut-off date for *past damages* will be as of the expert report  
24 (or such earlier date as the expert may select). In addition, the experts may try to  
25 project *future damages* (i.e., after the cut-off date) if the substantive standards for  
26 future damages can be met. With timely leave of Court or by written stipulation, the  
27 experts may update their reports (with supplemental reports) to a date closer to the time  
28 of trial.

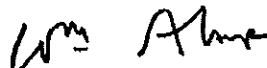
- 1 7. At trial, the direct testimony of experts will be limited to the matters disclosed in their  
2 reports. Omitted material may not ordinarily be added on direct examination. This  
3 means the reports must be complete and sufficiently detailed. Illustrative animations,  
4 diagrams, charts and models may be used on direct examination only if they were part  
5 of the expert's report, with the exception of simple drawings and tabulations that  
6 plainly illustrate what is already in the report, which can be drawn by the witness at  
7 trial or otherwise shown to the jury. If cross-examination fairly opens the door,  
8 however, an expert may go beyond the written report on cross-examination and/or  
9 redirect examination. By written stipulation, of course, all sides may relax these  
10 requirements.
- 11 8. To head off a recurring problem, experts lacking percipient knowledge should avoid  
12 vouching for the credibility of witnesses, *i.e.*, whose version of the facts in dispute is  
13 correct. This means that they may not, for example, testify that based upon a review of  
14 fact depositions and other material supplied by counsel, a police officer did (or did not)  
15 violate standards. Rather, the expert should be asked for his or her opinion based —  
16 explicitly — upon an assumed fact scenario. This will make clear that the witness is  
17 not attempting to make credibility and fact findings and thereby to invade the province  
18 of the jury. Of course, a qualified expert can testify to relevant customs, usages,  
19 practices, recognized standards of conduct, and other specialized matters beyond the  
20 ken of a lay jury. This subject is addressed further in the trial guidelines referenced in  
21 paragraph 15 below.
- 22 9. The last date to file dispositive motions shall be **FEBRUARY 28, 2008**. No dispositive  
23 motions shall be heard more than 35 days *after* this deadline, *i.e.*, if any party waits  
24 until the last day to file, then the parties must adhere to the 35-day track in order to  
25 avoid pressure on the trial date.
- 26 10. The **FINAL PRETRIAL CONFERENCE** shall be at **2:00 P.M. on MAY 5, 2008**. For the  
27 form of submissions for the final pretrial conference and trial, please see paragraph 15  
28 below.

- 1 11. A BENCH TRIAL shall begin on **MAY 19, 2008**, at **7:30 A.M.**, in Courtroom 9,  
2 19th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102. The trial  
3 schedule and time limits shall be set at the final pretrial conference. Although almost  
4 all trials proceed on the date scheduled, it may be necessary on occasion for a case to  
5 trail, meaning the trial may commence a few days or even a few weeks after the date  
6 stated above, due to calendar congestion and the need to give priority to criminal trials.  
7 Counsel and the parties should plan accordingly, including advising witnesses.
- 8 12. Counsel may not stipulate around the foregoing dates without Court approval.
- 9 13. While the Court encourages the parties to engage in settlement discussions, please do  
10 not ask for any extensions on the ground of settlement discussions or on the ground that  
11 the parties experienced delays in scheduling settlement conferences, mediation or ENE.  
12 The parties should proceed to prepare their cases for trial. No continuance (even if  
13 stipulated) shall be granted on the ground of incomplete preparation without competent  
14 and detailed declarations setting forth good cause.
- 15 14. To avoid any misunderstanding with respect to the final pretrial conference and trial,  
16 the Court wishes to emphasize that all filings and appearances must be made — on pain  
17 of dismissal, default or other sanction — unless and until a dismissal fully resolving the  
18 case is received. It will not be enough to inform the clerk that a settlement in principle  
19 has been reached or to lodge a partially executed settlement agreement or to lodge a  
20 fully executed agreement (or dismissal) that resolves less than the entire case. Where,  
21 however, a fully-executed settlement agreement clearly and fully disposing of the entire  
22 case is lodged reasonably in advance of the pretrial conference or trial and only a  
23 ministerial act remains, the Court will arrange a telephone conference to work out an  
24 alternate procedure pending a formal dismissal.
- 25 15. If you have not already done so, please read and follow the “Supplemental Order to  
26 Order Setting Initial Case Management Conference in Civil Cases Before Judge  
27 William Alsup” and other orders issued by the Clerk’s office when this action was  
28 commenced. Among other things, the supplemental order explains when submissions

- 1 are to go to the Clerk's Office (the general rule) versus when submissions may go  
2 directly to chambers (rarely). With respect to the final pretrial conference and trial,  
3 please read and follow the "Guidelines For Trial and Final Pretrial Conference in Civil  
4 Bench Cases Before The Honorable William Alsup." All orders and guidelines  
5 referenced in the paragraph are available on the district court's website at  
6 <http://www.cand.uscourts.gov>. The website also includes other guidelines for  
7 attorney's fees motions and the necessary form of attorney time records for cases  
8 before Judge Alsup. If you do not have access to the Internet, you may contact Deputy  
9 Clerk Dawn K. Toland at (415) 522-2020 to learn how to pick up a hard copy.
- 10 16. All pretrial disclosures under FRCP 26(a)(3) and objections required by FRCP 26(a)(3)  
11 must be made on the schedule established by said rule.
- 12 17. This matter is hereby **REFERRED** to the **ADR UNIT** for **MEDIATION**.

13  
14 **IT IS SO ORDERED.**

15  
16 Dated: September 5, 2007.

17   
18 \_\_\_\_\_  
19 WILLIAM ALSUP  
20 UNITED STATES DISTRICT JUDGE  
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28

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

CENTRAL DISTRICT OF CALIFORNIA

DEL MAR SEAFOODS, INC.

**SUBPOENA IN A CIVIL CASE**

V.

BARRY COHEN, CHRIS COHEN, et al.

Case Number:<sup>1</sup> MISC.  
 CV 07-02952 WHA  
 (USDC N.D. Cal)

TO: LEONARD COHEN  
 Olde Port Inn Restaurant, Pier 3, Port San Luis Pier  
 Avila Beach, CA (805) 595-2515

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. **Deposition to be recorded stenographically.**

PLACE OF DEPOSITION San Luis Reporting, 1302 Osos Street, San Luis Obispo, CA (805) 541-5962	DATE AND TIME 1/4/2008 9:00 am
--	-----------------------------------


- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Plaintiffs	DATE 12/5/2007
--	-------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Max L. Kelley, Cox Wootton Griffin Hansen & Poulos, 190 The Embarcadero, San Francisco, CA 415-438-4600

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

EXHIBIT 2

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (e)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

CENTRAL DISTRICT OF CALIFORNIA

DEL MAR SEAFOODS, INC.

**SUBPOENA IN A CIVIL CASE**

V.

BARRY COHEN, CHRIS COHEN, et al.

Case Number:<sup>1</sup> MISC.  
 CV 07-02952 WHA  
 (USDC N.D. Cal)

TO: MICHAEL COHEN  
 Olde Port Fisheries, Pier 3, Port San Luis Pier  
 Avila Beach, CA (805) 595-9456

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. **Deposition to be recorded stenographically.**

PLACE OF DEPOSITION	San Luis Reporting, 1302 Osos Street, San Luis Obispo, CA (805) 541-5962	DATE AND TIME	1/4/2008 1:00 pm
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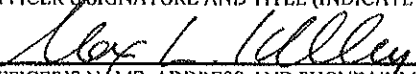
- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
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- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Attorney for Plaintiffs	12/5/2007

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Max L. Kelley, Cox Wootton Griffin Hansen & Poulos, 190 The Embarcadero, San Francisco, CA 415-438-4600

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (e)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate excuse for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS LLP**  
Gregory W. Poulos (SBN 131428)  
Max L. Kelley (SBN 205943)  
190 The Embarcadero  
San Francisco, CA 94105  
Telephone No.: 415-438-4600  
Facsimile No.: 415-438-4601

**LAW OFFICES OF RICHARD P. WAGNER**  
Richard P. Wagner (SBN 166792)  
700 Oceangate, Suite 700  
Long Beach, CA 90802  
Telephone: (562) 216-2946  
Facsimile: (562) 216-2960

Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.  
  
Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8- foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**PLAINTIFF'S NOTICE OF  
DEPOSITION OF BARRY COHEN**

**TO DEFENDANT BARRY COHEN AND CLAIMANT F/V POINT LOMA FISHING  
COMPANY, INC. AND THEIR ATTORNEYS OF RECORD:**

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

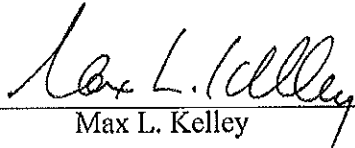
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL: 415-438-4600  
FAX: 415-438-4601

DelMarSeafoods2301

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the plaintiff DEL MAR SEAFOODS, INC. will take the deposition of defendant BARRY COHEN, individually, and as the President and Manager of the Claimant F/V POINT LOMA FISHING COMPANY, INC., before a notary public on *Wednesday, January 9, 2008, at 9:00 a.m.*, at the offices of Cox, Wootton, Griffin, Hansen & Poulos, LLP, 190 The Embarcadero, San Francisco, California, 94105 (415) 438-4600. The deposition will be recorded stenographically and continue day to day, excluding holidays and weekends, until completed.

Dated: December 6, 2007

COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS, LLP  
Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

By:   
Max L. Kelley

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP  
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DelMarSeafoods02101

**COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS LLP**  
Gregory W. Poulos (SBN 131428)  
Max L. Kelley (SBN 205943)  
190 The Embarcadero  
San Francisco, CA 94105  
Telephone No.: 415-438-4600  
Facsimile No.: 415-438-4601

**LAW OFFICES OF RICHARD P. WAGNER**  
Richard P. Wagner (SBN 166792)  
700 Oceangate, Suite 700  
Long Beach, CA 90802  
Telephone: (562) 216-2946  
Facsimile: (562) 216-2960

Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8- foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**PLAINTIFF'S NOTICE OF  
DEPOSITION OF CHRIS COHEN**

**TO DEFENDANT CHRISTENE COHEN AND HER ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil  
Procedure, the plaintiff DEL MAR SEAFOODS, INC. will take the deposition of defendant

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

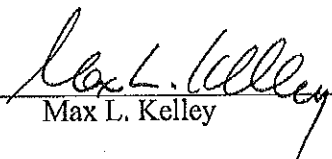
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

D:\MuSeafoods\2501

1 CHRIS COHEN (aka "CHRISTENE COHEN") before a notary public on *Friday, January*  
2 *11, 2008, at 10:00 a.m.*, at the offices of A.A. Nichols, Inc., 2607 N. Hayden Rd., Scottsdale,  
3 AZ, 85257. The deposition will be recorded stenographically and continue day to day,  
4 excluding holidays and weekends, until completed.

5  
6 Dated: December 6, 2007

COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS, LLP  
Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

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10 By:   
11 Max L. Kelley  
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26 COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

27 199 THE EMBARCADERO  
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28 DelMarSeafoods2101

**PROOF OF SERVICE**

Case: *Del Mar Seafoods, Inc. v. Barry Cohen, Chris Cohen and F/V Point Loma*

Case No.: U.S. District Court, Northern Dist. Case No.: CV 07-02952 WHA

I am employed in the City and County of San Francisco by the law firm of COX, WOOTTON, GRIFFIN, HANSEN & POULOS, LLP, 190 The Embarcadero, San Francisco, California 94105. I am over the age of 18 years and not a party to the within action.

On December 6, 2007, I served the attached document(s):

- **PLAINTIFF'S NOTICE OF DEPOSITION OF BARRY COHEN**
- **PLAINTIFF'S NOTICE OF DEPOSITION OF CHRIS COHEN**
- **PLAINTIFF'S NOTICE OF DEPOSITION OF DAVE KOBAK**

on the parties, through their attorneys of record, by placing copies thereof in sealed envelopes (except facsimile transmission(s)), addressed as shown below, for service as designated below:

(A) By First Class Mail: I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the addressee on the date indicated.

(B) By Personal Service: I caused each such envelope to be personally delivered to the addressee(s) by a member of the staff of this law firm on the date indicated.

(C) By Messenger Service: I caused each such envelope to be delivered to a courier employed by FIRST LEGAL SUPPORT SERVICES or by WORLDWIDE ATTORNEY SERVICES, with both of whom we have a direct billing account, who personally delivered each such envelope to the addressee(s) on the date indicated.

(D) By Federal Express: I caused each such envelope to be delivered to Federal Express Corporation at San Francisco, California, with whom we have a direct billing account, to be delivered to the addressee(s) on the next business day. I deposited each such envelope/package at the Three Embarcadero Center location of Federal Express Corporation.

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP  
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94103  
TEL 415-418-4000  
FAX 415-418-4501

Point Loma 2304

(E) By Facsimile: I caused such document to be served via facsimile electronic equipment transmission (fax) on the party(ies) in this action by transmitting a true copy to the following fax numbers:

<i>SERVICE</i>	<i>ADDRESSEE</i>	<i>PARTY REPRESENTED</i>
A	James P. Walsh Gwen Fanger DAVIS WRIGHT TREMAINE LLP 505 Montgomery Street Suite 800 San Francisco, CA 94111 Tel: 415-276-6500 Fax: 415-276-6599 <a href="mailto:Budwalsh@dwt.com">Budwalsh@dwt.com</a>	Counsel for Defendants and Claimant BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and Claimant F/V POINT LOMA Fishing Company, Inc.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on December 6, 2007 at San Francisco, California.

\_\_\_\_\_  
Zoe Conner

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP

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Davis Point Loma 2504